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LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Chapter III

[Docket No. 18-CRB-0012-RM]

Modification and Amendment of Regulations to Conform to the MMA

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notification of inquiry.

SUMMARY: The Copyright Royalty Judges (Judges) publish a notice of inquiry regarding necessary and appropriate modifications and amendments to agency regulations following enactment of a new law regarding the music industry.

DATES: Comments and proposals, if any, are due no later than [INSERT DATE **20** DAYS AFTER THE DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

ADDRESSES: You may submit comments and proposals, identified by docket number 18-CRB-0012-RM, by any of the following methods:

CRB's electronic filing application: Submit comments and proposals online in eCRB at <https://app.crb.gov/>.

U.S. mail: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Overnight service (only USPS Express Mail is acceptable): Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024-0977; or

Commercial courier: **Address** package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. **Deliver to:** Congressional Courier Acceptance Site, 2nd Street NE and D Street NE, Washington, DC; or

Hand delivery: Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Instructions: Unless submitting online, commenters must submit an original, two paper copies, and an electronic version on a CD. All submissions must include a reference to the CRB and this docket number. All submissions will be posted without change to eCRB at <https://app.crb.gov/> including any personal information provided.

Docket: For access to the docket to read submitted background documents or comments, go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 18-CRB-0012-RM.

FOR FURTHER INFORMATION CONTACT: **Anita Blaine**, CRB Program Specialist, by telephone at (202) 707-7658 or e-mail at crb@loc.gov.

SUPPLEMENTARY INFORMATION:

Background

The Orrin G. Hatch-Bob Goodlatte Music Modernization Act, Pub. L. No. 115-264, 132 Stat. 3676 (Oct. 11, 2018) (MMA), implements changes in administration of copyright royalties relating to the music industry. The most sweeping changes relate to the copyrights of songwriters and publishers of nondramatic musical works. Prior to enactment of the MMA, section 115 of title 17 (Copyright Act) detailed procedures for administration of the compulsory license (also known as the “mechanical” compulsory license) to reproduce and distribute, including by digital transmissions, phonorecords embodying copyrighted musical works.

Chapter 8 of the Copyright Act requires the Copyright Royalty Judges (Judges) to conduct proceedings every five years to determine the rates and terms for the section 115

license. *See* 17 U.S.C. 801(b)(1), 804(b)(4). In the MMA, Congress authorized designation of an entity, the Mechanical License Collective (MLC) to serve as a clearinghouse for collection and distribution of royalties and to develop a comprehensive database to ensure efficient and appropriate payment and distribution of those royalties.

Creation of the MLC and the other statutory changes in the MMA requires or authorizes modification of the Judges' regulations relating to section 115. For example, section 102(d) of the MMA requires the Judges, not later than 270 days after enactment of the MMA, to amend part 385 of 37, Code of Federal Regulations (CFR) "to conform the definitions used in such part to the definitions of the same terms described in section 115(e) of title 17, United States Code, as added by" section 102(a) of the MMA. That provision also directs the Judges to "make adjustments to the language of the regulations as necessary to achieve the same purpose and effect as the original regulations with respect to the rates and terms previously adopted by the [Judges]." In addition, the MMA authorizes the Judges to adopt regulations concerning proceedings to set the administrative assessment established by the statute to fund the MLC. 17 U.S.C. 115(d)(7)(D)(viii), 115(d)(12)(A).

The MMA also adds a new section 801(b)(8) to the Copyright Act, which authorizes the Judges "to determine the administrative assessment to be paid by digital music providers under section 115(d)" but states that "[t]he provisions of section 115(d) shall apply to the conduct of proceedings by the [Judges] under section 115(d) and not the procedures in this section, or section 803, 804, or 805."

The Judges seek input from persons and entities who reasonably believe they have a significant interest in the content of necessary or appropriate changes to the regulations

in chapter III, title 37, Code of Federal Regulations (CFR). The Judges also seek input from persons and entities who reasonably believe they have a significant interest in interpreting and applying the changes the MMA purports to make to chapter 8 of the Copyright Act.

Specifically, but not exclusively, the Judges seek comments regarding the following questions.

(1) What regulations in chapter III, title 37 CFR, if any, *must* be changed and how?

(2) What regulations in chapter III, title 37 CFR, if any, *should* be changed and how?

(3) What effect, if any, does the new language in subparagraph 8 of section 801(b) have on the Judges' ability to make necessary procedural or evidentiary rulings under sections 801, 803, 804, and/or 805¹ of the Copyright Act, and, in particular, does the new language have the effect that the Judges are now required to adopt new regulations, notwithstanding their general authority under section 801(c)?

(4) If the new language in subparagraph 8 of section 801(b) affects the Judges' authority under other subsections of section 801, how does it change that authority or the procedures to exercise that authority?

The Judges solicit proposed new or modified regulatory language that may be necessary to fully implement the MMA. Commenting persons and entities must support each legal conclusion and each proposed regulatory change with appropriate legal

¹ Examples: section 801(c) (necessary procedural and evidentiary rulings), section 803(b)(5) (paper proceedings), section 803(b)(6)(C)(ix) (subpoenas), section 803(c)(2) (rehearings), section 803(c)(5) (protective orders).

analysis and citation to authority. After considering the proposals, if the Judges determine that rulemaking is required, the Judges will publish a formal notice of proposed rulemaking in accordance with the provisions of the Administrative Procedures Act.

Dated: October 30, 2018.

Suzanne M. Barnett,
Chief Copyright Royalty Judge.
[FR Doc. 2018-24089 Filed: 11/2/2018 8:45 am; Publication Date: 11/5/2018]